

Reminder: New York City Ban on Salary History Inquiries Takes Effect October 31st



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Beginning on October 31st, New York City employers will be prohibited from inquiring about or relying on salary history during the hiring process. As a reminder, this ban makes it an unlawful discriminatory practice for an employer, employment agency, or employee or agent of the employer to: (1) inquire about the salary history of an applicant; or (2) rely on salary history of an applicant to determine salary, benefits, or other compensation for such applicant during the hiring process. Employers should revise their hiring processes in order to comply with the new law as soon as possible.

Recently, the New York City Commission on Human Rights released guidance regarding the ban on salary history inquiries in the form of two “Fact Sheets.” Both Fact Sheets answer the same questions, one from the perspective of employers, the other from the perspective of job applicants. The Fact Sheet for Employers provides the following questions and answers:

Q: Does this new law apply to my business?

A: Yes. This new law applies to all employers in New York City, regardless of size. If you employ at least one employee in New York City, you must comply with this law.

Q: Who is protected?

A: Most applicants for new jobs in New York City are protected, except:

- Applicants for internal transfer or promotion with their current employer.
- Applicants for positions with public employers for which compensation is set pursuant to a collective bargaining agreement

Q: What is prohibited?

A: Employers cannot:

- Ask applicants questions about or solicit information about applicants' current or prior earnings or benefits, for example on job applications.
- Ask applicants' current or former employers or their employees about applicants' current or prior earnings or benefits.
- Search public records to learn about applicants' current or prior earnings or benefits.
- Rely on information about applicants' current or prior earnings or benefits to set their compensation.

Q: What is not prohibited?

A: Employers can:

- Make statements about the anticipated salary, salary range, bonus, and benefits for a position.
- Inquire about applicants' expectations or requirements for salary, benefits, bonus, or commission structure.
- Ask about objective indicators of applicants' work productivity in their current or prior jobs, such as revenue, sales, production reports, profits generated, or books of business.
- Make inquiries to applicants' current or former employers or search online to verify non-salary information, such as work history, responsibilities, or achievements. However, if this results in the accidental discovery of current or prior earnings or benefits, the employer cannot rely on this information in making salary or benefits decisions.
- Make inquiries about salary history that are authorized or required by federal, state, or local law.

- Verify and consider current or prior earnings or benefits only if offered voluntarily and without prompting by the applicant during the interview process.

Note: The NYC Human Rights Law also provides that employers may engage in discussion about unvested equity or deferred compensation that an applicant would forfeit or have cancelled by virtue of the applicant's resignation from their current position.

Q: What are the consequences for employers who violate the law?

A: They may be required to pay damages, a fine, and/or be subject to additional affirmative relief such as mandated training and posting requirements. The New York City Commission on Human Rights, which is responsible for enforcing the law, may impose a civil penalty of up to \$125,000 for an unintentional violation, and up to \$250,000 for an "intentional malicious violation."

Note: Employers could also be subject to attorney's fees and other damages available under the NYC Human Rights Law.

The Fact Sheet for Employers can be found [here](#).

The Fact Sheet for Job Applicants can be found [here](#).

Our recent blog posts regarding the salary history ban can be found [here](#) and [here](#).

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